

Washington, D.C. 20505

Resource Management Staff

DRAFT

13 December 1978

MEMORANDUM FOR: OGC
, OLC

Here is a draft of the DCI Annual Report sections on Relations with the Congress and Other Legal and Propriety Matters. Please review and phone any comments to me at by COB 19 December to enable me to proceed with DCI and NFIB review of a full draft.

There are Congressional and legal aspects of the Security and Counterintelligence sections, and you are receiving copies of that for review by separate distribution.

I am sending the CIA/IG a separate copy of that section for his direct review.

Thanks,

PGO

Attachments:
As stated

DRAFT

INTELLIGENCE AND THE CONGRESS

With transition through the start-up phase of the House Permanent Select Committee on Intelligence (HPSCI), and increased experience in working with the Senate Select Committee on Intelligence (SSCI) and Appropriations Committees in both houses of the Congress, 1978 seemed to me to mark significant maturation of the new Congressional-intelligence relationship. Oversight is now an integral part of the lives of both parties and generally functioning smoothly, cooperatively, and, insofar as I can tell, effectively. The Intelligence Community is gradually broadening its substantive support on policy issues including unclassified assessments--in the first nine months of 1978, for example, the CIA alone provided the Congress over 23 briefings and serviced over 1355 requests for documents. (U)

1978 was historic in terms of Congressional authorization and appropriation of the FY 1979 NFIP budget. On 17 September, the President signed into law the first annual authorization act for intelligence and intelligence-related activities (PL 95-370). He commended the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, and the House and Senate Armed Services Committees for their efforts in enhancing Congressional oversight while minimizing the risks of disclosure of classified information. The detailed authorization review by the Congress also put a new face on the older appropriation process. The Appropriations Committees in both houses took serious note of authorization decisions, and in the final analysis, the enacted 1979 NFIP budget in large measure reflects

the decisions made by the authorization Committees and concurred in by Appropriations. Overall, the Congressional review of the intelligence budget is becoming a consistent, reproducible framework for effective dialogue, with its procedures and interaction constructive, and cumulatively far more important than the course or outcome of one or another specific debated budget issue. (U)

With respect to legislation affecting intelligence, my staff and I have enjoyed a close working relationship with several Congressional Committees in an exchange of perspectives, expertise, position papers and amendments that I think has resulted in sounder legislation and legislative proposals. (U)

An outstanding 1978 example of effective legislative cooperation between the Executive and the Congress resulted in the Foreign Intelligence Surveillance Act, signed into law by President Carter on 25 October 1978 and the culmination of a multiyear effort to obtain statutory procedures authorizing the use of electronic surveillance in the US for foreign intelligence and counterintelligence purposes. The Act requires prior judicial authorization for all such surveillance in which there is a possibility that communications of US persons might be involved. The Act is intended to assure the the American public that their privacy interests are protected by appropriate statutory safeguards and to rebuild public confidence in the national intelligence effort. It is also intended to ensure that the Executive Branch is not denied significant foreign intelligence and that intelligence personnel will have the affirmation of Congress by statute that their actions are lawful.

The Intelligence Community participated directly in the development of this legislation with the Attorney General and it had strong Administration support, including my own and that of the Directors of the FBI and NSA. The SSCI, Senate Judiciary Committee and HPSCI were each supportive and instrumental in the law's enactment. (U)

New "charter" legislation for intelligence was introduced by the SSCI (S2525) in February 1978, in fulfillment of a Church Committee recommendation that national foreign intelligence be regulated by new statutory charters and after nearly two years of work by Committee staff. The SSCI held extensive public hearings from April through August, taking testimony from former Executive Branch officials cognizant of intelligence, academicians and civil libertarians (not, at that stage, current Administration witnesses). An Administration convened NSC/SCC Charter Working Group has met for the last several months under the direction of my General Counsel and the DDCI to deliberate the various proposed titles in an effort to develop Administration positions. It is my hope that a consensus Administration position can be developed early in the First Session of the 96th Congress to interact with the SSCI and the HPSCI--which is also interested in charter legislation--toward early refinement of proposals into appropriate and effective legislation. (U)

In addition to extensive consideration of the FY 1979 NFIP and of charter legislation, the SSCI this past year undertook a number of independent unclassified studies and evaluations of key intelligence products and activities, including: "The National Intelligence Estimates A-B Team Episode Concerning Soviet Strategic

Capability and Objectives"; "Soviet Oil Situation: An Evaluation of "Unclassified Summary: Involvement of NSA in Development of the Data Encryption Standard"; and "Activities of 'Friendly' Foreign Intelligence Services in the U.S. - A Case Study." A Study on the Quality of Intelligence on China (classified), a report of a staff inquiry into Frank Snepp's allegations, and a study on the Government's reorganization and capability to counter international terrorism are nearing completion. (U)

An additional major effort of the SSCI in 1979 is likely to be support to the whole Senate in the ratification debate on a new SALT agreement, drawing on Intelligence Community data with respect to Soviet strategic force posture and projections, and to monitoring and verification confidence of provisions of a proposed agreement. (U)

The HPSCI now has 13 full members and a staff of 28, including 14 professionals. In addition to internal organization and establishment of its role on the NFIP and other intelligence matters within the House of Representatives, the HPSCI last year undertook a number of studies of intelligence issues. In conjunction specifically with its Authorization responsibilities, the HPSCI is studying the value, risks and costs of human source collection. Other topics have included: Warning, Intelligence Community ADP, CIA's relationship with the media, the covert action approval process, and Community coverage and handling of narcotics and terrorism. In 1979 the HPSCI plans work on the Community's counterintelligence capabilities and on the process of estimative forecasting and trend analysis. (U)

In addition to support for SSCI and HPSCI concerns and the Appropriations process in both houses, the Intelligence Community also supported a number of other Congressional investigative efforts during 1978. These included the House Select Committee on Assassinations' extensive investigation, House and Senate probes into South Korean influence-buying efforts, and the Fraser Subcommittee's broader inquiry into Korean-American relations. (U)

The Congress has been very helpful to me during the past year in striving to ensure that a number of pieces of legislation adequately and appropriately reflected unique intelligence considerations, including allowance for the unique personnel needs of CIA in the Civil Service Reform Act.*

* Other examples included: the "Foreign Corrupt Practices Act of 1977," reprovisions allowing the maintenance of confidential intelligence-corporate relations; the Foreign Relations Authorization Act of 1978, exempting CIA from public revelation of gifts of foreign governments to CIA officers when these would reveal intelligence information; the Foreign Relations Authorization Act for FY 1979, with respect to amendments pertaining to the role of the Ambassador and "third country rule," and clarifications between significant reportable international science and technology agreements and intelligence activities; "Biomedical and Behavioral Research" legislation, ratifying existing CIA regulations in strict accordance with HEW regulations and protecting intelligence sources and methods; the "Age Discrimination in Employment Act Amendments of 1977," limiting provisions to the Civil Service Retirement Act and exempting other programs such as CIARDS; the "Ethics in Government Act" of 1978, ensuring that financial disclosure provisions do not impact adversely on CIA cover needs; the "Federal Physicians' Comparability Allowance Act of 1978" to include CIA among the affected agencies and departments. (U)

OTHER LEGAL AND PROPRIETY ISSUES

Oversight

The past year has seen continuous activities and we believe effective relationships between CIA and the Intelligence Oversight Board (IOB). Procedures for handling matters with the Board seem to be well established and the method of oversight working well. The actual number of items reported to the Board on a regular basis has decreased considerably from previous years, but this probably reflects primarily the fact that the previous years' reports included a fair amount of "catch-up" on newly discovered old matters, whereas most 1978 concerns were new or current. (U)

Questions of illegality or impropriety being reported to the Attorney General now exceed those being reported to the IOB. CIA and the Department of Justice have agreed upon procedures for reporting possible criminal violations to the Attorney General. These procedures will be formalized shortly, after being modified slightly to meet a congressional objection. In the meantime, reports are being made by the Agency and acted upon by the Attorney General in accordance with the draft procedures. (U)

Other Legal Concerns

Implementation of the two new Executive Orders, 12036 on intelligence activities and 12065 on classification, has received

considerable attention from my legal staff since the regulations, instructions and procedures required by these Orders will largely determine the effectiveness of implementation of their intent, and the ability of intelligence to continue to carry on necessary operations under their limitations. (U)

The volume of intelligence-related litigation continues at a high level and its thrust is largely unchanged. The greatest number of cases is in the Freedom of Information and Privacy Act areas, followed by tort cases. Many of the latter arise from activities disclosed in previous years' investigations. We continue to prevail in freedom of information disputes over withholding intelligence information for reasons of classification or protection of sources and methods. Nevertheless, the cases are becoming more difficult because the plaintiffs have become more sophisticated and have, as we do, the advantage of a growing body of case precedents to draft upon. My FY 1980 budget submission contained, as an integral provision related to budgetary cuts, proposed legislative relief from the Freedom of Information Act (FOIA). I intend to propose, during the first session of the 96th Congress, legislation which would exclude from the provisions of the FOIA all CIA information systems of intelligence information that is collected clandestinely and which is in a raw unevaluated form. This would consist largely of field intelligence reports, operational reporting, and other highly classified material collected overseas through various clandestine means. The amount of information of this type which is releasable to the public is extremely small in comparison

both to the tremendous number of man-hours required to review it and to the actual quantity of information which must be reviewed pursuant to the terms of the the FOIA as currently drafted. Furthermore, an expanded exemption would clearly demonstrate to those individuals and agencies abroad with which the CIA deals that the information which is provided to us will not be released in any form, a condition without which the information would simply not be provided to us. (U)

There is an apparent increase in CIA equal employment opportunity discrimination cases and although only one reached litigation, it seems likely that others will. This may be only one aspect of a greater willingness of employees to assert and contest their rights while still employed. With discovery of new records on the previously disclosed CIA drug experimentation programs, we have spent many months of careful planning for the attempt to notify individuals and organizations who may have been involved. The question of relations with the academic community has also been in the forefront, with certain parts of that community invoking or imposing guidelines deemed unacceptable by the Agency or the Intelligence Community and resulting in negotiations and debate and a certain amount of public controversy. (U)

CIA Inspector General Activities

With an increase of 12 positions in the Inspection/Audit Staffs in 1978 for an overall total of 87 positions, the CIA Inspector General has been able to maintain a specialized group to handle personnel grievances, conduct a faster cycle of inspecting foreign

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and domestic installations, conduct special investigations of allegations of questionable activities and make inter-Directorate surveys of certain management issues. Traditionally made up of officers from the different Directorates serving two-to three-year rotational tours, the Inspection Staff has been augmented by officers from outside CIA to add a new perspective. (S)

We have set a long-term objective of inspecting Directorate of Operations overseas operating divisions on a 2-1/2 year cycle basis, and a target goal of inspecting all domestic installations for the first time within a year. Accordingly, the Inspector General's Staff during 1978 inspected 52 Directorate of Operations overseas facilities and 104 domestic facilities--including all of those of the Office of Security, the Office of Personnel, the Office of Logistics, Foreign Broadcast Information Service, the Domestic Collection Division and the Foreign Resource Division. Additionally, Headquarters elements of seven major CIA components, selected for inspection at this time because of their current importance in the effective fulfillment of the Agency's mission, were inspected. (S)

Inspections concentrated this year on CIA domestic facilities because such facilities are relatively more vulnerable to inadvertent infractions of complex US Federal or local laws, the provisions of Executive Order 12036, and CIA regulations. Moreover, the Inspector General felt that certain activities within the US, if they became known and misinterpreted, could stimulate adverse public reactions harmful to the Agency. Besides compliance, this inspection

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made an effort to study effectiveness as well, not only as an important objective in itself, but also in terms of justification of risk of antagonizing public attitudes toward CIA. Special attention was devoted to examining CIA activities concerned with academic institutions. (S)

The major value of these inspections has been to provide me with an independent insight into Agency effectiveness and an independent assurance that CIA components are conducting their assigned missions in accordance with the procedures and restrictions that have been established by Federal Law, Executive Order 12036, and CIA regulations. Allegations and evidence of occasional misdeeds on the part of individual employees have been promptly and thoroughly investigated and appropriate measures recommended to senior Agency management. Indications of possible violations of law and cases of institutional impropriety have, in coordination with the Office of the General Counsel, been promptly reported to the Intelligence Oversight Board or the Attorney General and to the Director. (S)

CIA also adopted an Inspector General recommendation for establishing better and more credible grievance and dissent systems within the Agency. These recommendations were based on in-depth studies of how the grievance and dissent problems have been handled by certain other Government agencies. (S) (U?)

During 1978, the Inspector General's Audit Staff completed 132 audits, including 27 major Headquarters components, six data processing systems, 60 field installations, 27 proprietary organizations and 12

nonappropriated funds and miscellaneous activities. Since management information systems consume millions of dollars annually, audits of major Agency components and activities stressed review of the planning and application of data processing resources, in addition to traditional audit objectives. Increased emphasis was also given to audits of the contractual procurement process to ensure that competition for Agency contracts was sought and that sole source procurement was fully justified and documented. (U?)

I am not commenting on Inspector General activities within other Intelligence Community elements, since my responsibilities in this regard are limited to CIA. ()

SECRET